

## § 457.153

(e) Production to be counted as non-seed production will include all harvested or mature appraised production that does not qualify as seed production to count as specified in section 12(d). Any such production may be adjusted in accordance with section 12(f).

(f) For the purpose of determining the quantity of mature production:

(1) Shelled commercial hybrid seed corn will be:

(i) Increased 0.12 percent for each 0.1 percentage point of moisture below 15 percent; or

(ii) Decreased 0.12 percent for each 0.1 percentage point of moisture in excess of 15 percent.

(2) The weight of ear corn required to equal one bushel of shelled seed corn will be increased 1.5 pounds for each full percentage point of moisture in excess of 14 percent, and any portion of a percentage point will be disregarded. The moisture content of ear corn will be determined from a shelled sample of the ear corn.

(3) When records of commercial hybrid seed corn production provided by the seed company have been adjusted to a shelled corn basis of 15.0 percent moisture and 56 pound avoirdupois bushels, sections 12(f)(1) and (2) above will not apply to harvested production. In such cases, records of the seed company will be used to determine the amount of production to count, provided that the moisture and weight of such production are calculated on the same basis as that used to determine the approved yield.

### 13. Prevented Planting

Your prevented planting coverage will be 50 percent of your amount of insurance for timely planted acreage. If you have limited or additional levels of coverage as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

[62 FR 65350, Dec. 12, 1997; 62 FR 67117, Dec. 23, 1997]

## § 457.153 Peach crop insurance provisions.

The Peach Crop Insurance Provisions for the 2013 and succeeding crop years are as follows:

### FCIC Policies

#### DEPARTMENT OF AGRICULTURE

#### Federal Crop Insurance Corporation

#### Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

## 7 CFR Ch. IV (1–1–13 Edition)

### Peach Crop Provisions

#### 1. Definitions

*Bearing tree.* A tree in at least the 4th growing season after set out.

*Bushel.* Fifty pounds of ungraded peaches.

*Direct marketing.* Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, or permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

*Fresh peach production.* Peach production from insurable acreage that:

(1) Is sold, or could be sold, for human consumption without undergoing any change in the basic form, such as peeling, juicing, crushing, etc.

(2) Grades at least U.S. Extra No. 1 or better, and consisting of a 2¼ inch minimum diameter, unless otherwise specified in the Special Provisions.

(3) Is from acreage that is designated as fresh peaches on the acreage report;

(4) Follows the recommended cultural practices generally in use for fresh peach acreage in the area in a manner generally recognized by agricultural experts;

(5) Is from acreage that you certify, and if requested by us, provide verifiable records to support, that at least 50 percent of the total production from acreage reported as fresh peach acreage was sold as fresh peaches in one or more of the four most recent crop years; and

(6) Is sold or could have been sold for a price that is not less than the applicable fresh peach price election for the applicable crop year in the actuarial documents. If the fresh peach production is sold or could have been sold for a price less than the applicable fresh peach price election for the applicable crop year in the actuarial documents, you must provide verifiable records to show that the price received was at least the amount paid by buyers for fresh peaches in the area in which you sell your peaches.

*Harvest.* The picking or removal of mature peaches from the trees either by hand or machine.

*Interplanted.* Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

*Loss in quality.* When the crop is damaged to the extent that the producer does not receive the average price for U.S. Extra No. 1 peach.

*Marketable.* Peach production acceptable for processing or other human consumption even if failing to meet any U.S. or applicable state grading standard.

*Packing shed.* A facility at which peaches are graded, packed and cooled in preparation for shipment to a wholesale market.

*Post production cost.* The costs, as specified in the Special Provisions, associated with activities that occur during harvesting, packing, transportation, and marketing, as determined by FCIC using regional peach price data of peach production budgets from regional respective universities extension, other USDA agencies, and other third party resources.

*Processing peach production.* Peach production from insurable acreage that is:

- (i) Sold, or could be sold, for the purpose of undergoing a change to its basic structure such as peeling, juicing, crushing, etc.; or
- (ii) From acreage designated as processing peaches on the acreage report.

*Set out.* Transplanting the tree into the orchard.

## 2. Unit Division.

In addition to the requirements contained in section 34 of the Basic Provisions, optional units may be established if each optional unit is:

- (a) Located on non-contiguous land; or
- (b) By fresh and processing as specified in the Special Provisions.

## 3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions (§457.8):

- (a) You may select a separate coverage level for all fresh peach acreage and for all processing peach acreage. For example, if you choose the 55 percent coverage level for all fresh peach acreage, you may choose the 75 percent coverage level for all processing peach acreage.

(1) Notwithstanding paragraph (a) of this section, if you elect the Catastrophic Risk Protection (CAT) level of coverage for fresh peach acreage or processing peach acreage, the CAT level of coverage will be applicable to all insured peach acreage in the county of both fresh and processing peaches.

(2) If you only have fresh peach acreage designated on your acreage report and processing peach acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your fresh peach acreage.

(3) If you only have processing peach acreage designated on your acreage report and fresh peach acreage is added after the sales closing date, we will assign a coverage level equal to the coverage level you selected for your processing peach acreage.

(b) You may select only one price election for all the peaches in the county insured under this policy unless the Special Provisions provide different price elections by fresh and processing peaches. If the Special Provisions allow different price elections, you may select a separate price election for all your fresh peaches and for all your proc-

essing peaches. If the Special Provisions do not allow for different price elections, the price elections you choose for fresh peaches and processing peaches must have the same percentage relationship to the maximum price offered by us for fresh and processing peaches. For example, if you choose 100 percent of the maximum price election for fresh peaches, you must choose 100 percent of the maximum price election for processing peaches.

(c) You must report, not later than the production reporting date designated in section 3 of the Basic Provisions, separately by fresh and processing peach acreage, as applicable:

(1) Any event or action that could impact the yield potential of the insured crop including, interplanting of a perennial crop, removal of trees, any tree damage, change in practices, or any other circumstance that may reduce the expected yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing and non-bearing trees on insurable and uninsurable acreage;

(3) The age of trees, variety, and the planting pattern; and

(4) For the first year of insurance, acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the crop that is interplanted with the peaches;

(ii) The variety;

(iii) The planting pattern; and

(iv) Any other reasonable and pertinent information that we request in order to establish your approved yield.

(d) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(c)(1) through (4). If the situation occurred:

(1) Before the beginning of the insurance period, we will reduce the yield used to establish your production guarantee for the current crop year as necessary. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance;

(2) Or may occur after the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee is due to an uninsured cause of loss;

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, production lost due to uninsured causes equal to the amount of the reduction in yield used to establish your production guarantee will be applied in determining any indemnity (see section 12(c)(1)(ii)). We will reduce the yield used

## § 457.153

## 7 CFR Ch. IV (1–13 Edition)

to establish your production guarantee for the subsequent crop year.

(e) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

### 4. Contract Changes

In accordance with section 4 of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

### 5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

### 6. Report of Acreage.

In addition to the requirements contained in section 6 of the Basic Provisions, you must report and designate all acreage of peaches as fresh or processing peaches by the acreage reporting date. Any acreage not meeting all the requirements to qualify for fresh peach production must be designated on the acreage report as processing peach production.

### 7. Insured Crop

In accordance with section 8 of the Basic Provisions (§ 457.8), the crop insured will be all the peaches in the county for which a premium rate is provided by the actuarial documents:

- (a) In which you have a share;
- (b) That are grown on tree varieties that:
  - (1) Were commercially available when the trees were set out;
  - (2) Are a variety having a chilling hour requirement that is appropriate for the area;
  - (3) Are grown on a root stock that is adapted to the area.
- (c) That the crop insured will be any varieties of peaches that are grown for the production of Fresh or Processing Peaches.
- (d) That are grown in an orchard that, if inspected, is considered acceptable by us;
- (e) That has reached at least the fourth growing season after set out. However, we may agree in writing to insure acreage that has not reached this age if it has produced at least 100 bushels of peaches per acre; and
- (f) That are grown for:
  - (1) Fresh peach production; or
  - (2) Processing peach production.

### 8. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, peaches interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it

does not meet the requirements contained in your policy.

### 9. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions (§ 457.8):

(1) Coverage begins on November 21 of each crop year, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is September 30.

(b) In addition to the provisions of section 11 of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable interest on any acreage of peaches on or before the acreage reporting date for the crop year and if the acreage was insured by you the previous crop year, insurance will not be considered to have attached, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

(c) Notwithstanding section 9(a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(d) If your peach policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates, whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

## 10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions (§457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;
- (3) Earthquake;
- (4) Insects, but not damage due to insufficient or improper application of pest control measures;
- (5) Plant disease, but not damage due to insufficient or improper application of disease control measures;
- (6) Volcanic eruption;
- (7) Wildlife, unless control measures have not been taken;
- (8) An insufficient number of chilling hours to effectively break dormancy; or
- (9) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions (§457.8), we will not insure against damage or loss of production due to:

- (1) Split pits, regardless of cause; or
- (2) Inability to market the peaches for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

## 11. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

(b) In addition to the requirements of section 14 of the Basic Provisions (§457.8), and unless the insurance period has ended prior to each of the following events, the following will apply:

(1) You must notify us within three days of the date that harvest of the damaged variety should have started if the crop will not be harvested.

(2) You must notify us at least 15 days before any production from any unit will be sold by direct marketing unless you have records verifying that the direct market peaches were "weighed and graded" through a packing shed. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(3) If you previously gave notice in accordance with section 14 of the Basic Provisions (§457.8), and if you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest of the damaged variety, so that we may inspect the damaged production. You must not sell or dispose of the damaged crop until after we have given you written consent to do so.

(4) If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

## 12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for fresh and processing peaches, as applicable, by the respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production of fresh and processing peaches to be counted, as applicable (see subsection 12(c)) by the respective price election;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the total in section 12(b)(5) from the total in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

Example:

You have a 100 percent share in one basic unit with 10 acres of fresh peaches and 5 acres of processing peaches designated on your acreage report, with a 300 bushel per acre production guarantee for both fresh and processing peaches, and you select 100 percent of the price election of \$15.50 per bushel for fresh peaches and \$6.50 per bushel for processing peaches. You harvest 2,500 bushels of fresh peaches and 500 bushels of processing peaches. Your indemnity will be calculated as follows:

(A) 10 acres × 300 bushels = 3,000-bushel production guarantee of fresh peaches;

5 acres × 300 bushels = 1,500-bushel production guarantee of processing peaches;

(B) 3,000-bushel production guarantee × \$15.50 price election = \$46,500 value of the production guarantee for fresh peaches; 1,500-bushel production guarantee × \$6.50 price election = \$9,750 value of the production guarantee for processing peaches;

## § 457.154

(C) \$46,500 value of the production guarantee for fresh peaches + \$9,750 value of the production guarantee for processing peaches = \$56,250 total value of the production guarantee;

(D) 2,500 bushels of fresh peach production to count  $\times$  \$15.50 price election = \$38,750 value of the fresh peach production to count; 500 bushels of processing peach production to count  $\times$  \$6.50 price election = \$3,250 value of the processing peach production to count;

(E) \$38,750 value of the fresh peach production to count + \$3,250 value of the processing peach production to count = \$42,000 total value of the production to count;

(F) \$56,250 total value of the production guarantee—\$42,000 total value of the production to count = \$14,250 value of loss; and

(G) \$14,250 value of loss  $\times$  100 percent share = \$14,250 indemnity payment.

[End of Example]

(c) The total production to count (in bushels) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) From which production is sold by direct marketing if you fail to meet the requirements contained in section 11.

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested peach production that would be marketable if harvested;

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to adequately care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(v) Any appraised production on insured acreage will be considered production to count unless such production is exceeded by the actual harvested production.

(2) All harvested marketable peach production from the insurable acreage.

(3) Mature marketable peach production may be reduced as a result of a loss in quality due to an insured cause of loss. The amount of production to count for such peaches will be determined as follows:

(i) For fresh peaches by:

(A) Dividing the value of the damaged peaches minus the post production cost specified in the Special Provisions, by the fresh peach price election; and

(B) Multiplying the result of section 12(c)(3)(i)(A) (not to exceed 1.00) by the number of bushels of the damaged fresh peaches.

(ii) For processing peaches by:

(A) Dividing the value of the damaged peaches minus the post production cost specified in the Special Provisions, by the processing peach price election; and

(B) Multiplying the result of section 12(c)(3)(ii)(A) (not to exceed 1.00) by the number of bushels of the damaged processing peaches.

(4) Peaches that cannot be marketed due to insurable causes will not be considered production to count.

### 13. Late and Prevented Planting

the late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 39923, July 25, 1997, as amended at 62 FR 65176, Dec. 10, 1997; 65 FR 47839, Aug. 4, 2000; 77 FR 52592, Aug. 31, 2012]

## § 457.154 Processing sweet corn crop insurance provisions.

The Processing Sweet Corn Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC Policies

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

*Reinsured Policies*

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

*Processing Sweet Corn Crop Provisions*

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

### 1. Definitions

*Base contract price.* The price stipulated on the processor contract without regard to discounts or incentives that may apply.

*Bypassed acreage.* Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

*Good farming practices.* The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the sweet corn processor